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AT-LARGE WHIP

# Congress of the United States
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## Washington, DC 20515–3010

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November 13, 2007

Mr. Kevin Martin
Chairman, Federal Communications Commission
445 12th Street SW:
Room: 8-B201
Washington, DC 20554

Re: **NFL Network and Other Independent Programmers**

Dear Chairman Martin:

I am writing to follow up on a number of constituent letters and emails I have received complaining that the cable systems to which they subscribe in New Jersey are refusing to carry NFL Network. Many of those letters also note that those cable systems require them to purchase other sports networks--such as Versus and the Golf Channel--that those constituents never watch; that my constituents are troubled by cable companies' discrimination against NFL Network and other high-quality non-sports independent channels in favor of less popular channels that the cable companies own; and that my constituents hope that I will be able to help persuade the cable companies to negotiate a carriage deal with NFL Network before this season's NFL Network game telecasts begin on Thanksgiving night.

I turn to you since I understand that the FCC has opened a rulemaking proceeding to consider program carriage issues such as these – particularly as they relate to independent and diverse channels.

I also note that in connection with another high-profile sports channel carriage dispute – the one between Comcast and MASN here in Washington in 2005 – the FCC's decision to appoint an arbitrator to settle the dispute caused the parties to reach a negotiated solution.

I would urge you to consider appointing an arbitrator in the NFL Network dispute so it can be resolved more quickly (preferably through negotiation between the parties).

Lastly, I have also seen a number of recent press stories noting that the problem my constituents have identified is not limited to NFL Network and other sports channels, but that non-sports independent channels face similar discrimination from cable – and that some independent channels are choosing to sell themselves to large media holding companies rather than to continue as stand-alone businesses (see attached TV Watch story on the Oxygen network sale). It is not a good trend since this increasing concentration obviously will reduce media diversity, and also consumer choice.

Thank you for reviewing these matters.

Sincerely,

Donald M. Payne
Member of Congress

Attachment

Like Oxygen, Hallmark Channel Looks To Gain Some Financial Breathing Room
A media critique by Wayne Friedman, Wednesday, October 10, 2007
**KEEPING ITS MYSTERIOUS TV CABLE** programming/financial ways intact, a top-rated cable network continues not getting its due -- nor the highest price -- from cable operators.

Now, after decades of head-scratching cable programming deals, Hallmark Channel wants federal regulators to have a look. Hallmark, somewhat surprisingly a top five rated network among all cable networks in prime time, says it only garners some 3 cents a subscriber from cable operators.

That is too low compared to other networks like CNN, Court TV, Golf Channel and E! Entertainment Television, all of which pull in much better affiliate fees, but don't bring home as many viewers as Hallmark. Hallmark's prime-time slate is mostly family-oriented programming.

Henry Schleiff, president and CEO of Hallmark parent Crown Media Holdings, thinks the Federal Communications Commission might like to do something about this -- ! perhaps add some new regulations to the already federally mangled rule world of cable TV.

The problem is this: Hallmark is an independent network, and as such can't command better deals than other multi-network, bigger media companies, can get. The Oxygen cable network was in Hallmark's league -- the league of independent cable networks. But yesterday Oxygen breathed a little easier with the announcement of its purchase by NBC.

In the best of all possible worlds, Hallmark would love to have the same fate -- to be sold to the likes of a CBS, a network which, like Hallmark, still has lot of older viewers. CBS would like to grow its cable holdings. Is Hallmark the right fit? CBS executives might say they'd rather get some slightly younger viewers.

With the coming of new cable affiliate negotiations, Schleiff realizes new deals with substantially higher increase! s will be hard to come by. Thus, the visit to the FCC.

Does the higher-rated show deserve the higher price? That's the rule when it comes to advertisers, generally speaking. But the cable industry has a different set of criteria, which come from its longtime established roots as a local cable programming monopoly.

Sure there may be satellite and broadband now, but old habits are tough to break. Pricing leverage among cable network operators has everything to do with the number of cable channels -- as well as more valuable broadcast stations -- you have. It's not necessarily whether they are any good.

There is nothing wrong with big media companies. But capitalism only seems to live on one end of the cable business.

Hallmark should do more work to convince the FCC.

If, in fact, Hallmark has been convincing low-ball packaged good advertisers to spend more money on the network -- those sponsors typically are attracted to programs skewing toward older viewers -- this might be helpful in convincing the FCC that the other side of the cable financial equation, that of affiliate fees, should also work at more market-like appropriate rates.

And if not, the FCC should fine cable operators. It could rule that a family of networks should not be the only ones with an advantage, that a family programming network should have a shot.